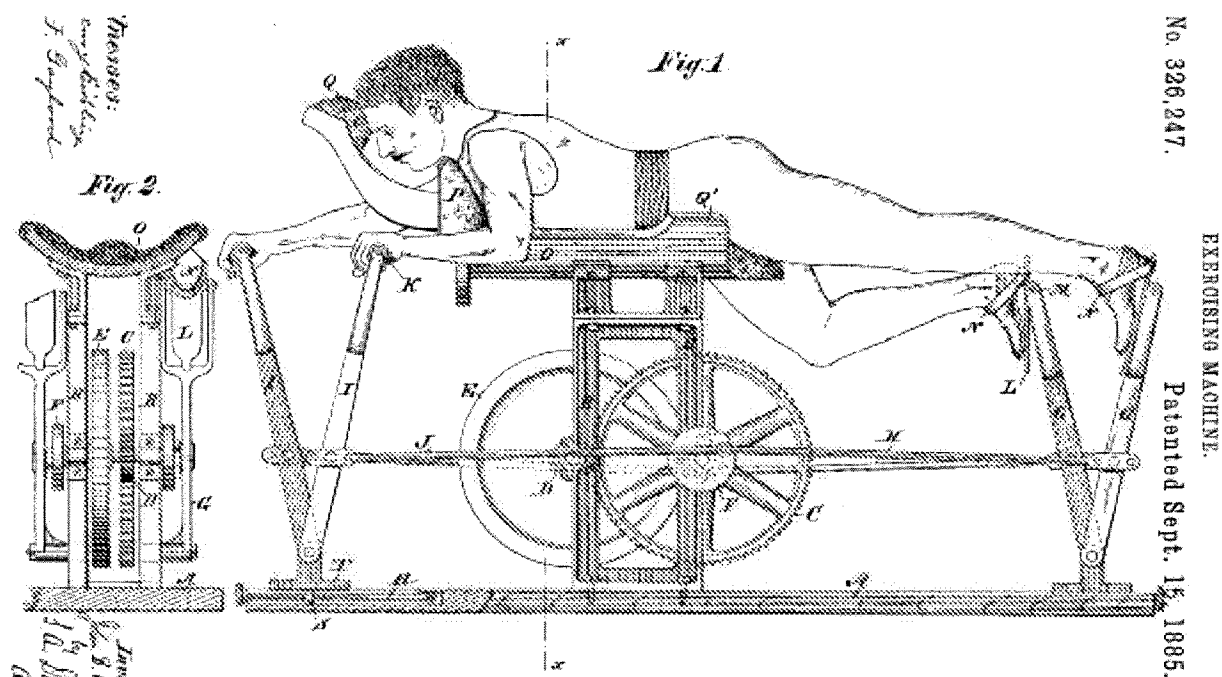


## Remarks and Arguments

### III. U.S. Patent No. 326,247 Cited/Applied By The Examiner

#### A. The Claims are not anticipated by the Root Reference

The Examiner has cited/applied this reference as anticipating all of the pending claims 10-21, 23 and 36 in this application.



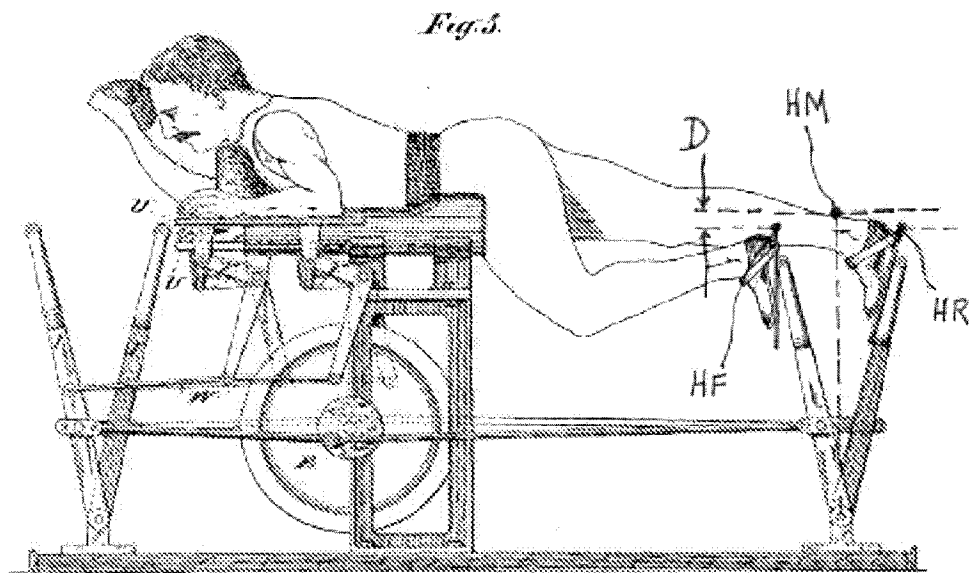
Claim 1 calls for an apparatus having a pair of left and right foot pedals each having a foot sole receiving surface for standing on vertically, the foot pedals being mounted on a frame for movement in a back and forth direction along an arcuate path between forwardmost upward and rearwardmost downward positions.

The foot levers G of the Root apparatus do not and cannot support the weight of the user and the apparatus is deliberately not intended to enable a user to stand on the foot pedals. As explicitly shown and described in the detailed description of the Root

reference - the user's trunk is supported horizontally, not vertically on a "saddle or body support arranged upon the top of the fly-wheel frame. It is preferably cushioned, and conforms to the general shape of a person's body, with a breast-support, P and forehead-support, Q. There are also hip-support, Q', which are for the lower parts fo the body to rest upon, and this to relieve the abdomen of a person exercising from the weight of the body or other weight or pressure." See column 1, lines 50-51, column 2, lines 52-58 of the Root reference.

Claim 1 of this application specifically calls for foot pedals for *standing on*.

Root's apparatus teaches precisely the opposite. The foot levers G in Root cannot and do not support a user in an *upright* position. As explicitly described in Root, it is the *saddle or body support O* that bears the user's weight – not the foot levers or foot plates.



Even further and equally importantly, as shown in the figure above, the foot plates L in the Root reference do not move between forwardmost upward and rearwardmost downward positions. To the contrary, both the left and right foot plates L

in Root move through a circular arc having a peak upward *position “HM” that is in the middle* of forwardmost and backwardmost path of travel of the foot plates L as shown above. This midpoint position HM of the foot plates L is a distance “D” *higher than* the height of both the forwardmost position “HF” and the rearwardmost position “HR” of the foot plates L as shown above. In fact, foot plates L travel between the same downward position in both the forwardmost HF and rearwardmost HR positions. Thus Root’s apparatus clearly does not anticipate the present invention in any rationally arguable way.

**B. The Root Reference Explicitly Describes the Momentum Of the Flywheel As Moving the Pedals Over a Single All the Way Forward and All the Way Back Path Between The Same Downward Position**

Even further, Root’s apparatus does not enable the foot pedals to travel along any *selected segment* of an arcuate path.

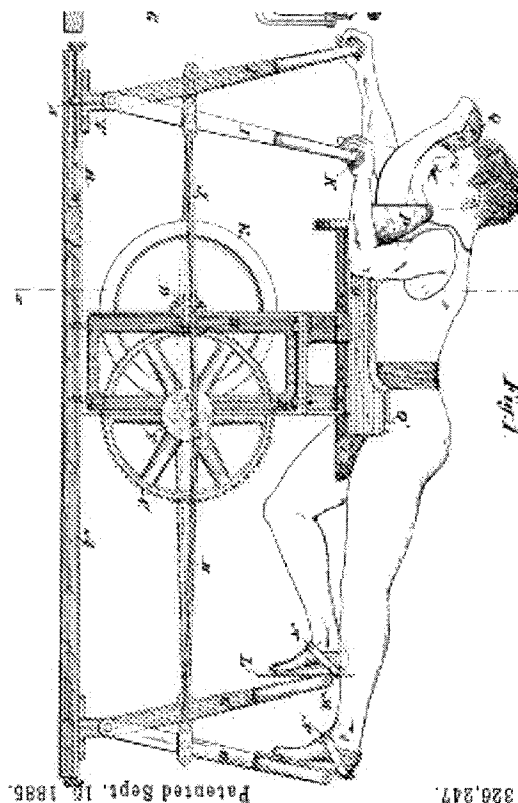
To the contrary, the foot pedals of the Root apparatus travel in a single back and forth path that is explicitly described in the specification as being advantageous provided by the momentum of the flywheel, not by the selection of a segment by the user. And, the *only path* shown between all the way back and all the way forward not into any divisible segment of all the way back and all the way forward. And, there is no mechanism described or shown on the apparatus that allows/enables the user to select a segment of the path of the all the way back and all the way forward path of the pedals.

The one and only path of travel of the Root foot pedals is back and forth to the same vertical height in both the forwardmost HF and rearwardmost HR positions. The entire purpose of the Root apparatus is to support the torso of the user in a horizontal orientation, such that the foot pedals travel all the way back and the way forward along

a single path, not along or to any vertical position by which the user must support their own weight.

**C. There Is Nothing In the Root Disclosure that Suggests That The Root Apparatus Can Be Stood in An Upright Orientation – The Contrary Is Shown – The Root Reference Is Not Analogous**

The claims in this application call for the handles to move forwardly and backwardly. If as the examiner contends, the Root apparatus were oriented vertically (which it is not intended to be) and the user were standing on the foot pedals upright as follows:



the handles would not move *forwardly and backwardly* as called for by the claims, but the handles would instead move up and down. And, the weight of the user would cause the frame of the apparatus to pivot counterclockwise and fall over to the ground. The linkages as shown in the Root apparatus would also not be able to withstand the stress

placed on them by the weight of the user and would fail. And, there is no possibility that the user can select any segment of the up and down path of the foot supports.

#### **E. The Section 102 Rejection Should be Withdrawn**

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Ex Parte Swope, 2004 Pat. App. LEXIS 30, (Bd.Pat.App. 2004). Whole elements of a claim that are missing in the prior art make a Section 102 rejection clearly improper. Ex Parte Swope, 2004 Pat. App. LEXIS 30, (Bd.Pat.App. 2004).

Moreover, in mechanical cases such as this, claim limitations calling for mechanical relationships, must be found literally in the prior art reference being applied in order for a Section 102(b) anticipation to be properly said to exist. In Re Bart, 918 F.2d 187 (Fed. Cir. 1990).

## CONCLUSION

Reconsideration of the present application and early and favorable action is respectfully requested. If the examiner believes that a teleconference would expedite prosecution of the present application, the examiner is invited to call the Applicant's undersigned attorney at the Examiner's earliest convenience.

Any amendments, withdrawal or cancellation of claims made herein is made without prejudice and is not an admission that said withdrawn, canceled or amended subject matter is not patentable. Applicant reserves the right to pursue said withdrawn, canceled or amended subject matter in one or more continuation or divisional applications.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account **02-3038**, under **C016-7080US5**.

Respectfully submitted

/M. Lawrence Oliverio/ Date: 21 May 2009  
M. Lawrence Oliverio, Esq. Reg. No. 30,915  
Rissman Hendricks & Oliverio, LLP  
Customer Number 21127  
Tel: (617) 367-4600  
Fax: (617) 367-4656